

## REMARKS

Upon entry of the present amendment claims 1, 5, 28, 29, 30, 31, 32, and 33 will be pending. Claim 1 is amended to remove recitation of non-elected subject matter. Claims 2-4, and 6-27 are canceled without prejudice to Applicants' right to pursue the subject matter of the canceled claims in one or more applications. Claim 1 is amended, claims 2-3 and 6-27 are canceled, and new claims 28-33 are added, in order to more particularly point out and distinctly claim Applicants' invention.

Support for new claim 28 is found in the specification as filed at page 7, line 28 through page 8, line 6, and at page 10, lines 1-7. Support for new claim 29 is found in the specification as filed at page 7, line 28 through page 8, line 6, at page 9, lines 24-27, at page 12, lines 11-30, at page 28, lines 12-19, and in Figure 2A. Support for claims 30-32 is found at page 8, lines 1-6 of the specification as filed. Support for new claim 33 is found at page 6, lines 3-8, at page 8, lines 28-32, and at page 12, lines 11-30 of the specification as filed. Accordingly, the new claims are fully supported by the specification as filed and they do not add new matter.

The specification is amended by addition of an ABSTRACT, submitted on a separate page, in compliance with 37 C.F.R. 1.72(b). The ABSTRACT is that disclosed in WO 00/68420, the publication of International Application Number PCT/CA00/00533.

The specification is also amended, at page 28. More specifically, the first three full paragraphs at page 28 of the specification as filed, which refer to Figures 1, 2, and 3 respectively, are amended to include the SEQ ID NOs for each of the nucleotide and protein sequences that are referred to therein.

The revised Sequence Listing submitted herewith has been updated to include SEQ ID NO: 7 (the amino acid sequence of *S. cerevisiae* *KRE5* depicted in FIG 1 for comparison with that of *CaKRE5*), SEQ ID NO: 8 (the amino acid sequence of *Drosophila melanogaster* *UGGT1* depicted in FIG 1 for comparison with that of *CaKRE5*), SEQ ID NO: 9 (the amino acid sequence of *S. pombe* *GPT1* depicted in FIG 1 for comparison with that of *CaKRE5*), SEQ ID NO: 10 (the amino acid sequence of *S. cerevisiae* Alr1p depicted in FIG 2 for comparison with that of *CaALR1*), SEQ ID NO: 11 (the amino acid sequence of *S. cerevisiae* Alr2p depicted in FIG 2 for comparison with that of *CaALR1*), SEQ ID NO: 12 (the amino acid sequence of *S. cerevisiae* *CDC24* depicted in FIG 3 for comparison with that of *CaCDC24*), and SEQ ID

NO: 13 (the amino acid sequence of *S. pombe* *CDC24* depicted in FIG 3 for comparison with that of *CaCDC24*).

## **PRIORITY**

At page 2 of the Office Action the Examiner has alleged that the present application is not entitled to benefit of the May 5, 1999 filing date of U.S. Provisional patent application no. 60/132,878. More specifically, the Examiner has alleged that the filing date of the instant application is July 15, 2002. Based upon this allegation, the Examiner has concluded that the instant application was filed more than 30 months after the claimed May 5, 1999 benefit date, and therefore, it failed to “meet the 30-month deadline stated in PCT Article 22.” Therefore, according to the Examiner, the instant application is only entitled to a priority date of May 5, 2000. Applicants respectfully traverse and assert that, for the reasons provided below, the instant application is entitled to benefit of the May 5, 1999 filing date of U.S. Provisional patent application no. 60/132,878.

In response, Applicants respectfully direct the Examiner’s attention to Exhibit A, which is a copy of the return-receipt postcard filed with the instant application. In particular, Applicants note that the stamped date of receipt of the instant application and related papers, is November 5, 2001, *i.e.* within the 30-month period specified by Article 22 PCT.

Applicants also respectfully direct the Examiner’s attention to Exhibit B, which is a copy of a letter entitled: NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 C.F.R. 1.494 OR 1.495 (the “371 Acceptance Letter”). In particular, Applicants direct the Examiner’s attention to the fourth paragraph thereof which specifically provides that the July 15, 2002 date is not the filing date; rather it is the date on which the last of the requirements under 35 U.S.C. 371 was met. Moreover the 371 Acceptance Letter not only specifically provides that the filing date of the instant application is the International Filing Date, *i.e.* May 5, 2000, the 371 Acceptance Letter also documents Applicants’ claimed priority date of May 5, 1999.

In spite of the above, the Examiner has, nonetheless alleged that the filing date of the instant application is July 15, 2002 even while acknowledging that the instant application was filed under 35 U.S.C. § 371 as the U.S. national stage application of International (PCT) Application No. PCT/CA00/00533 filed May 5, 2000 (Office Action, at page 2). In this regard, Applicants respectfully further direct the Examiner’s attention to MPEP § 1893.03(b), which attempts to clarify the frequent confusion of the filing date of an application with the date of entry of that international application into the U.S. national stage. MPEP § 1893.03(b) also

provides the statutory and regulatory bases establishing that the filing date of the national stage application is the filing date of the international application.

Therefore, in view of the above, Applicants respectfully submit that the instant application was filed within the 30-month deadline imposed by Article 22 PCT. Consequently, the instant application is entitled to the benefit of the May 5, 1999 filing date of Applicants' priority application, *i.e.*, U.S. Provisional patent application no. 60/132,878. Accordingly, Applicants respectfully request that the Examiner (a) withdraw his assertion at page 2 of the Office Action that the present application is only entitled to a priority date of May 5, 2000 and (b) acknowledge that the present application is entitled to the claimed priority date of May 5, 1999.

### **SPECIFICATION**

The Examiner objects to the specification for the reason provided at page 2 of the Office Action. More specifically, the Examiner alleges that the specification does not include an abstract of the disclosure as required by 37 C.F.R. § 1.72(b).

In response, Applicants note that an ABSTRACT of the disclosure of the present invention is submitted herewith on a separate sheet. Accordingly, Applicants respectfully submit that the objection to the specification has been overcome, and therefore, Applicants respectfully request that the objection to the specification be withdrawn.

### **SEQUENCE RULES**

It is alleged in the Office Action that there are sequences present in Figures 1-3 that are not identified by SEQ ID NO., either in the figures or in the brief description thereof at page 28 of the specification as filed.

Applicants respectfully submit that the first three paragraphs at page 28 of the specification, as amended, recite the subject SEQ ID NOs, and, therefore, meet the requirements of the Sequence Rules. Accordingly, Applicants respectfully request that the Examiner's objection under the Sequence Rules be withdrawn.

## **CLAIM OBJECTIONS**

Claims 1-3, 10 and 11 are objected to by the Examiner for the reasons provided at page 3 of the Office Action. More specifically, claims 1-3 and 10 are objected to for the recitation of non-elected subject matter, and claim 11 is objected to as a multiply-dependent claim for an alleged failure to refer to other claims in the alternative.

Applicants respectfully submit that claim 1, as amended does not recite non-elected subject matter. Applicants also note that claims 2, 3, 10 and 11 are canceled.

Consequently, Applicants respectfully submit that the objections to claims 1, 2, 3, 10, and 11 have either been obviated or are now moot. Accordingly, Applicants respectfully request that the objections to claims 1, 2, 3, 10, and 11 be withdrawn.

## **REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

Claim 2 is rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite, for the reasons provided at page 3 of the Office Action.

Since claim 2 is now canceled, Applicants respectfully submit that this rejection is now moot. Accordingly, Applicants respectfully request that the rejection of claim 2 under 35 U.S.C. § 112, second paragraph, be withdrawn.

## **REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH**

Claims 2 and 3 are rejected under 35 U.S.C. § 112, first paragraph as allegedly indefinite, for the reasons provided at page 3 of the Office Action.

Since claims 2 and 3 are now canceled, Applicants respectfully submit that this rejection is now moot. Accordingly, Applicants respectfully request that the rejection of claims 2 and 3 under 35 U.S.C. § 112, first paragraph, be withdrawn.

## **REJECTION UNDER 35 U.S.C. § 102**

Claims 3 and 10 are rejected under 35 U.S.C. § 102(e) over US Patent No. 6,747,137 (the “ ‘137 patent”). More specifically, at pages 6 and 7 of the Office Action, the Examiner has alleged that a portion of SEQ ID NO: 6328 of the ‘137 patent could be selected that would anticipate claims 3 and 10.

Since claims 3 and 10 are canceled, Applicants respectfully submit that this rejection is now moot. Accordingly, Applicants respectfully request that the rejection of claims 3 and 10 under 35 U.S.C. § 102(e) be withdrawn.

With respect to new claims 28-33, Applicants note that, for a reference to anticipate a claim, that reference must disclose each and every limitation of the claim, either expressly or inherently (*see e.g. Trintec Industries, Inc. v. Top-U.S.A. Corp.* 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002)). Applicants respectfully submit that: (1) the '137 patent does not disclose a nucleic acid of at least 2000 nucleotides that is at least 98% identical to a nucleic acid of claim 1, and (2) the '137 patent does not disclose a nucleotide sequence encoding either of the proposed transmembrane domains of *CaALR1* (*i.e.* amino acid position 818 to amino acid position 836 of SEQ ID NO: 4, or amino acid position 850 to amino acid position 870 of SEQ ID NO: 4; *see e.g.* page 28, lines 14-15 and Fig. 2A of the specification as filed). Accordingly, the '137 patent cannot anticipate any of new claims 28-33.

### CONCLUSION

Applicants respectfully requests that the present amendments and remarks be entered and made of record in the instant application. Applicants respectfully submit that each of the objections and each of the rejections cited in the Office Action have either been obviated or overcome. Accordingly, an early allowance of the application is earnestly requested. If any issues remain in connection herewith, the Examiner is respectfully invited to telephone the undersigned to discuss the same.

Respectfully submitted,

Date: December 6, 2005

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Date Mailed: November 5, 2001

Serial No.: To Be Assigned Filed: On even date herewith

Inventor: Roemer et al.

For: IDENTIFICATION OF CANDIDA ALBICANS ESSENTIAL FUNGAL SPECIFIC GENES AND USE THEREOF IN ANTIFUNGAL DRUG DISCOVERY

**THE STAMP OF THE PATENT OFFICE HEREON MAY BE TAKEN AS AN ACKNOWLEDGMENT OF THE DATE STAMPED ON THE FOLLOWING:**

1. Transmittal Letter to the U.S. Designated/Elected Office (DO/EO/US) (and copy thereof)
3. Preliminary Amendment;
4. Preliminary Amendment Fee Sheet (and copy thereof);
5. A copy of International Publication WO 00/68420;
6. A copy of the International Search Report issued in connection with International Patent Application Number PCT/CA00/00533;
7. A copy of the International Preliminary Examination Report and Notification of Transmittal issued in connection with International Patent Application Number PCT/CA00/00533; and
8. A transmittal of Sequence Listing and a Sequence Listing in paper and computer-readable formats.

OTHER: \_\_\_\_\_

File No. 10182-015-999 Sender: LAC/TCT/MJR

**10/018105**

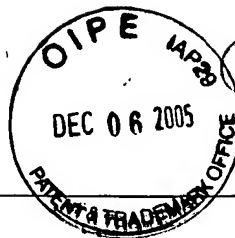
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| U.S. APPLICATION NUMBER NO. | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
|-----------------------------|-----------------------|------------------|
| 10/018,105                  | Terry Roemer          | 110182-015-999   |

INTERNATIONAL APPLICATION NO.

PCT/CA00/00533

I.A. FILING DATE

05/05/2000

PRIORITY DATE

05/05/1999

Pennie & Edmonds  
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CONFIRMATION NO. 5750

371 ACCEPTANCE LETTER



\*OC000000008683660\*

Date Mailed: 08/28/2002

### NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.494 OR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as an Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

07/15/2002

DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and  
 (c)(4) REQUIREMENTS

07/15/2002

DATE OF RECEIPT OF ALL 35 U.S.C.  
 REQUIREMENTS

A Filing Receipt (PTO-103X) will be issued for the present application in due course. **THE DATE APPEARING ON THE FILING RECEIPT AS THE " FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371 REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE.** *The filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. 363).* Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

The following items have been received:

- U.S. Basic National Fee
- Biochemical Sequence Diskette
- Biochemical Sequence Listing
- Copy of IPE Report
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Oath or Declaration
- Preliminary Amendments



- Request for Immediate Examination

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Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

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PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/903 (371 Acceptance Notice)